

STEPHANIE M. HINDS (CABN 154284)  
United States Attorney

**TOM COLTHURST (CABN 99493)**  
Chief, Criminal Division

AJAY KRISHNAMURTHY (CABN 305533)  
KEVIN J. BARRY (CABN 229748)  
LINA PENG (NYBN 5150032)  
Assistant United States Attorney

450 Golden Gate Avenue, Box 36055  
San Francisco, California 94102-3495  
Telephone: (415) 436-7050  
FAX: (415) 436-7050  
[Ajay.krishnamurthy@usdoj.gov](mailto:Ajay.krishnamurthy@usdoj.gov)

Attorneys for United States of America

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

V.

JONATHAN JOSEPH NELSON, et al.,

## Defendant.

**CASE NO. 17-CR-533-EMC**

# United States' Objection to Proposed Jury Instructions

The United States objects to the defense's proposed jury instructions. The instructions  
errately state the law and risk confusing the jury. Moreover, because there are many more bases for  
relevancy than stated in the instructions, and because additional bases for relevancy may or may not  
materialize later in trial, these instructions will prove unworkable in practice.

## I. Background

The defense has asked the Court to instruct the jury that evidence of the 2008 McNears assault and 2008 Livermore incident is admitted “only for the limited purpose of establishing the existence of the HASC enterprise.” ECF No. 2598 at 4.

1           **II. Argument**

2           There are several reasons that the Court should not give the defense's proposed instructions.

3           ***A. The instructions are inaccurate***

4           First, the instructions are inaccurate. “[E]vidence of uncharged crimes [is] admissible in a RICO  
 5 prosecution as proof of an enterprise, of the continuity of racketeering activity, and of the defendant's  
 6 knowledge of, agreement to, and participation in the conspiracy.” *United States v. Henley*, 766 F.3d 893,  
 7 914–15 (8th Cir. 2014) (quotation omitted). *See also United States v. Finestone*, 816 F.2d 583, 587 (11th  
 8 Cir. 1987) (Uncharged acts were “admissible to prove the membership and participation in the RICO  
 9 conspiracy.”)

10          In other words, the evidence that the United States has presented is relevant to establishing not  
 11 only the existence of the enterprise, but also its character, as well as the defendants' awareness of the  
 12 nature of the conspiracy of which they were a part.

13          For instance, the McNears assault is relevant to proving Nelson's participation in the conspiracy.  
 14 The United States anticipates that witnesses will testify that HASC members and associates often  
 15 discussed ongoing prosecutions; therefore, the McNears assault may also be relevant to proving Ott's  
 16 and Wendt's knowledge of the nature of the conspiracy.

17          In addition, the Superseding Indictment alleges that “HASC works cooperatively with other  
 18 Hells Angels chapters to engage in criminal activity.” ECF No. 374, ¶ 7. The McNears assault is  
 19 relevant to proving that allegation: Nelson (HASC) committed an assault along with a member of the  
 20 San Francisco charter (Mark Guardado).

21          Similarly, the Superseding Indictment alleges that “HASC has a formal leadership and  
 22 membership structure” that includes a “Vice-President.” ECF No. 374, ¶ 8. The McNears assault and  
 23 Livermore incident are relevant to proving those allegations. Nelson was arrested in a Hells Angels vest  
 24 that had a “Vice President” tag, and Futrell testified that the HASC treasurer seemed to be “the man in  
 25 charge” Tr. 1686.

26          Moreover, the Superseding Indictment alleges that the purposes of the enterprise included  
 27 “preserving and protecting the power . . . of the enterprise . . . through the use of intimidation” and  
 28 “keeping . . . community members in fear of the enterprise through violence and threats of violence.”

1 The McNears assault and Livermore incident are relevant to proving those allegations. Both incidents  
 2 reflect attempts to intimidate community members.

3 Additionally, the Superseding Indictment alleges that one of the means and methods of the  
 4 enterprise is that “members and associates of HASC agreed to purchase, possess, maintain, use, and  
 5 circulate a collection of firearms for use in criminal activity.” ECF No. 374, ¶ 15. The Livermore  
 6 incident is relevant to proving that allegation because several guns were recovered during the search. Tr.  
 7 1628.

8 Instructing the jury that this evidence should be considered “only for the limited purpose of  
 9 establishing the existence of the HASC enterprise,” ECF No. 2598 at 4, is an inaccurate statement of law  
 10 and risks confusing the jury.

11           *B. The character of the enterprise is important to proving VICAR purpose*

12 Courts have recognized that VICAR purpose can be shown through evidence that “acts of  
 13 violence were a common part of [the enterprise’s] culture.” *United States v. Banks*, 514 F.3d 959, 970  
 14 (9th Cir. 2008). The McNears assault, the Livermore incident, and the assaults on M.M. and J.T. are part  
 15 of the prosecution’s evidence that acts of violence were a common part of HASC’s culture. The jury  
 16 should be able to consider the evidence for that purpose as well.

17           *C. The instructions are unworkable*

18 The proposed instructions are also unworkable because some bases for relevancy may not appear  
 19 until later in the trial, if they appear at all. For instance, the Court heard testimony that T.C. was present  
 20 at the time of the McNears assault, and involved in the Livermore incident. The evidence presented so  
 21 far may therefore bear on his credibility. For one, the evidence demonstrates T.C.’s deep involvement in  
 22 HASC, and makes his knowledge of the enterprise’s activities more credible. On the other hand, if  
 23 T.C.’s explanation of these incidents differs from that provided by other witnesses, this evidence may  
 24 damage his credibility.

25 Because the Court will not be able to account for these possibilities, the defense’s proposed  
 26 instructions are unworkable.

27           *D. The defense should identify improper uses of evidence*

28 Because there are many proper uses of the evidence introduced so far, any instruction should be

1 aimed at restricting improper use. In other words, the Court should tell the jury the purposes for which  
2 they cannot use evidence, rather than telling the jury that evidence can be considered only for a  
3 “limited” purpose.

4 **III. Conclusion**

5 For these reasons, the United States objects to the defense’s proposed jury instructions.

6  
7  
8 DATED: April 21, 2022

Respectfully submitted,

9  
10 STEPHANIE M. HINDS  
United States Attorney

11  
12 /s/  
13 KEVIN J. BARRY  
LINA PENG  
AJAY KRISHNAMURTHY  
14 Assistant United States Attorneys  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28